

**To:** Forsgren, Lee[Forsgren.Lee@epa.gov]; Dubey, Susmita[dubey.susmita@epa.gov]; White, Elizabeth[white.elizabeth@epa.gov]; Greenwalt, Sarah[greenwalt.sarah@epa.gov]; Fotouhi, David[Fotouhi.David@epa.gov]; Grantham, Nancy[Grantham.Nancy@epa.gov]; Aarons, Kyle[Aarons.Kyle@epa.gov]; Eisenberg, Mindy[Eisenberg.Mindy@epa.gov]; Traylor, Patrick[traylor.patrick@epa.gov]; Neugeboren, Steven[Neugeboren.Steven@epa.gov]; Wehling, Carrie[Wehling.Carrie@epa.gov]; Kupchan, Simma[Kupchan.Simma@epa.gov]; Zipf, Lynn[Zipf.Lynn@epa.gov]; Mills, Derek[Mills.Derek@epa.gov]  
**Cc:** Miller, Kevin[Miller.Kevin@epa.gov]  
**From:** Rementer, Nicole  
**Sent:** Tue 4/24/2018 3:13:05 PM  
**Subject:** RE: FOR YOUR REVIEW: Proposed April 30 document production in WOTUS FOIA litigation

All:

Apologies, please try this link: [WOTUS FOIA Litigation Production \(April 30\)](#)

I have added each person individually to have access to the file; I hope this works.

Lee—Thank you for reaching out!

Regards,

**Nicole M. Rementer**

Attorney-Adviser | FOIA Expert Assistance Team (FEAT)

U.S. Environmental Protection Agency | Office of General Counsel

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**From:** Forsgren, Lee

**Sent:** Tuesday, April 24, 2018 11:10 AM

**To:** Dubey, Susmita <dubey.susmita@epa.gov>; White, Elizabeth <white.elizabeth@epa.gov>; Greenwalt, Sarah <greenwalt.sarah@epa.gov>; Fotouhi, David <Fotouhi.David@epa.gov>; Grantham, Nancy <Grantham.Nancy@epa.gov>; Aarons, Kyle <Aarons.Kyle@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Traylor, Patrick <traylor.patrick@epa.gov>; Neugeboren, Steven <Neugeboren.Steven@epa.gov>; Wehling, Carrie

<Wehling.Carrie@epa.gov>; Kupchan, Simma <Kupchan.Simma@epa.gov>; Zipf, Lynn <Zipf.Lynn@epa.gov>; Mills, Derek <Mills.Derek@epa.gov>  
**Cc:** Miller, Kevin <Miller.Kevin@epa.gov>; Rementer, Nicole <rementer.nicole@epa.gov>  
**Subject:** RE: FOR YOUR REVIEW: Proposed April 30 document production in WOTUS FOIA litigation

Susmita,

I don't know if it is just me or not but when I try to login to the shared drive on the link, it says that the item either does not exist or I don't have a right to see it. Happy to work to get to work reviewing it if I can see it.

Regards,

Lee

**From:** Dubey, Susmita

**Sent:** Tuesday, April 24, 2018 10:25 AM

**To:** White, Elizabeth <[white.elizabeth@epa.gov](mailto:white.elizabeth@epa.gov)>; Forsgren, Lee <[Forsgren.Lee@epa.gov](mailto:Forsgren.Lee@epa.gov)>; Greenwalt, Sarah <[greenwalt.sarah@epa.gov](mailto:greenwalt.sarah@epa.gov)>; Fotouhi, David <[Fotouhi.David@epa.gov](mailto:Fotouhi.David@epa.gov)>; Grantham, Nancy <[Grantham.Nancy@epa.gov](mailto:Grantham.Nancy@epa.gov)>; Aarons, Kyle <[Aarons.Kyle@epa.gov](mailto:Aarons.Kyle@epa.gov)>; Eisenberg, Mindy <[Eisenberg.Mindy@epa.gov](mailto:Eisenberg.Mindy@epa.gov)>; Traylor, Patrick <[traylor.patrick@epa.gov](mailto:traylor.patrick@epa.gov)>; Neugeboren, Steven <[Neugeboren.Steven@epa.gov](mailto:Neugeboren.Steven@epa.gov)>; Wehling, Carrie <[Wehling.Carrie@epa.gov](mailto:Wehling.Carrie@epa.gov)>; Kupchan, Simma <[Kupchan.Simma@epa.gov](mailto:Kupchan.Simma@epa.gov)>; Zipf, Lynn <[Zipf.Lynn@epa.gov](mailto:Zipf.Lynn@epa.gov)>; Mills, Derek <[Mills.Derek@epa.gov](mailto:Mills.Derek@epa.gov)>

**Cc:** Miller, Kevin <[Miller.Kevin@epa.gov](mailto:Miller.Kevin@epa.gov)>; Rementer, Nicole <[rementer.nicole@epa.gov](mailto:rementer.nicole@epa.gov)>

**Subject:** FOR YOUR REVIEW: Proposed April 30 document production in WOTUS FOIA litigation

Below for your review is a link to the April 30 proposed document release under the Freedom of Information Act request relating to the Waters of the United States Rule. The production is scheduled for Monday April 30, 2018, and is being made pursuant to a commitment in a status report filed in litigation over this FOIA request. In which we committed to rolling productions at the end of each month We are seeking your signoff on the

morning of April 30, so we have time to prepare the production by the deadline we committed to meet.

[https://usepa-my.sharepoint.com/personal/rementer\\_nicole\\_epa\\_gov/\\_layouts/15/onedrive.aspx?id=](https://usepa-my.sharepoint.com/personal/rementer_nicole_epa_gov/_layouts/15/onedrive.aspx?id=)

## Background

On March 22, 2017, EPA received a FOIA request from the Center for Biological Diversity (CBD) requesting certain records relating to the development and implementation of EO 13778, relating to the Waters of the United States Rule. On April 19, EPA received a second request from CBD requesting records relating to EPA's revision of the rule. Both requests are attached. On June 1, CBD filed a complaint in the federal district court for the District of Columbia alleging that EPA failed to respond to the first request. Subsequently, CBD amended its complaint to add allegations claiming that EPA failed to respond to the April 19 request. We filed an answer to the amended complaint on January 29.

On September 29, EPA filed a status report with the court describing the search it was conducting and explaining that the search conducted for both requests identified approximately 90,000 potentially responsive records. EPA further stated that it intended to review 2000 documents per month and would produce a monthly rolling release of responsive, non-privileged documents, with the first release on or about November 30. We have delivered document productions to CBD at the end of each month thereafter.

## Proposed April production

The proposed document release for the April 6 production is available through the Sharepoint link above, with all documents in a single pdf file. The proposed release includes almost 400 documents totaling almost 1600 pages, and reflects a search conducted for responsive documents created between January and April 2017. Custodians who were identified as having potentially responsive documents include members of the transition team as well as the Agency's Designated Ethics Official and his staff. The proposed production includes many emails relating to the 2017 Step One proposed rule, both within EPA and between EPA and the Army Corps of Engineers. A significant amount of information is redacted because it is subject to the deliberative process privilege or the attorney-client privilege, in addition to redactions of personal identifying information, such as conference line numbers and personal email addresses.

Please send me any comments via email, referencing the DOC ID (stamped on the bottom of each page). I will then be able to go into Relativity and address any concerns. And please feel free to contact me with any questions. Thank you for your time on this.

Susmita Dubey

Office of General Counsel

202-564-5577